

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>SHERRI TRETTER, Admin. of the Estate of WILLIAM BENDER,</b>	:	<b>CIVIL NO. 3:12-CV-0302</b>
	:	
<b>Plaintiff</b>	:	<b>(Judge Munley)</b>
	:	
<b>v.</b>	:	
	:	
<b>BRIAN SHIPTOSKI, et al.,</b>	:	
	:	
<b>Defendants</b>	:	

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**ORDER**

**AND NOW**, to wit, this 21<sup>st</sup> day of April 2015, upon consideration of the motion (Doc. 36) for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c), and the motion (Doc. 18) to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), it is hereby **ORDERED** that:

1. The motion (Doc. 36) for judgment on the pleadings is GRANTED in part and DENIED in part as follows:
  - a. The motion is GRANTED with respect to plaintiff's claims of conspiracy (Doc. 1-1, ¶¶ 199-201; 255-57, 263-65, 271-73, 279-81) and intentional infliction of emotional distress (Doc. 1-1, ¶¶ 198, 254, 262, 270, 278) set forth in counts thirteen and twenty through twenty-three.
  - b. Entry of Judgment is DEFERRED pending final disposition of the matter.
  - c. The motion is DENIED in all other respects.
2. Within twenty days of the date of this order, defendants Scharff, Houser, Robinson, Wolfe, and Zaremba shall file an answer or appropriate pretrial memorandum concerning the Eighth Amendment claims alleged

in counts one and eight through eleven, the negligence claims contained in counts thirteen and twenty through twenty-three and the wrongful death and survival actions set forth in counts twenty-five and twenty-six. FED. R. CIV. P. 12(a)(4)(A).

3. The motion (Doc. 18) to dismiss is GRANTED in part and DENIED in part as follows:
  - a. The motion is GRANTED as to all defendants with respect to plaintiff's claims of conspiracy (Doc. 1-1, ¶¶ 207-09; 215-17; 223-25; 231-33; 239-41; 247-49) set forth in counts fourteen through nineteen.
  - b. The motion is also GRANTED as to the Eighth Amendment claim lodged against PHS in count twelve. (Doc. 1-1, ¶¶ 185-94).
  - c. The motion is DENIED in all other respects.
4. Within twenty days of the date of this order, defendants Shiptoski, Stanish, Kosierowski, Schorschinsky, Sterling and Diaz shall file an answer or appropriate pretrial memorandum concerning the Eighth Amendment claims alleged in counts two through seven, the supplemental state law claims of negligence and intentional infliction of emotional distress in counts fourteen through nineteen, and the wrongful death and survival actions set forth in counts twenty-five and twenty-six. FED. R. CIV. P. 12(a)(4)(A).
5. Within twenty days of the date of this order, PHS shall file an answer or appropriate pretrial memorandum concerning the supplemental state law claim set forth in count twenty-four and the wrongful death and survival actions set forth in counts twenty-five and twenty-six. FED. R. CIV. P. 12(a)(4)(A).

**BY THE COURT:**

s/James M. Munley  
**JUDGE JAMES M. MUNLEY**  
**United States District Court**